

1982 WL 189190 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 25, 1982

***1 Re: Self-Insurance Annual Renewal Fee-Petition of Self-Insurers Association for Declaratory Ruling**

Honorable T. M. Nelson
Chairman
S. C. Industrial Commission
1800 St. Julian Place
Middleburg Office Plaza
Columbia, Sc 29204

Dear Commissioner Nelson:

You have asked for an informal opinion relating to the statutory authority of the Industrial Commission to impose an annual renewal fee upon employers carrying their own risks under the provisions of [§ 42-5-20, Code of Laws of South Carolina](#), 1976.

By way of background, on December 16, 1981, the Commission notified all qualified self-insurers and all servicing agents of self-insured workmen's compensation funds that, effective January, 1982, there would be imposed a \$100.00 annual renewal fee for all individual self-insurers and every fund. On January 20, 1982, a Petition for Declaratory Ruling as to your agency's authority to promulgate the above-described regulation was filed by the South Carolina Self-Insurers Association. Subsequently, you requested this Office to advise you as to the statutory authority, or lack thereof, for your agency's action.

A statutory agency has only the power and authority which is expressly granted in the creating statute or that authority which is required by necessary implication to carry out the mandate of the General Assembly. In [Richland County Dept. of Public Welfare v. Mickens](#), 246 S.C. 113, 142 S.E.2d 737 (1965). This means that an agency may take no action that is not specifically authorized by statute or is so necessary to the function of the agency that the General Assembly will be deemed to have implied the authority. The Mickens case indicates that a power will only be implied in cases where the legislative intent cannot be carried out without such implication.

After a careful review of the entire Workmen's Compensation Law, it is the opinion of this Office that there is no specific grant of authority to impose the above-described renewal fee. Further, it is the opinion of this Office that such a power is not found in the Workmen's Compensation Law by necessary implication.

I trust that this has sufficiently answered your question. If not, please feel free to call at your convenience. In closing, I would remind you that the extension which I obtained from Mr. Painter will expire on March 1, 1982. Your agency is required by the Administrative Procedures Act to provide Mr. Painter with your answer by that date.

Sincerely,

Clifford O. Koon, Jr.
Assistant Attorney General

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